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TRACEY CORDES, CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: rmw_/______

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHER DIVISION

MARCIA VELA, Individually and as Personal Representative of the Estate of John Vela, Deceased,

Plaintiff,

vs

ACE AMERICA INSURANCE COMPANY and KNAPE & VOGT MANUFACTURING COMPANY, jointly & severely,

Defendants.

**1:10-cv-100**
**Janet T. Neff**
**U.S. District Judge**

PAUL G. VALENTINO (P34239)
Attorney for Plaintiff
LEHMAN & VALENTINO, P.C.
43494 Woodward Avenue
Suite 203
Bloomfield Hills, Michigan 48302
(248) 334-7787
Fax (248) 334-7202
E-Mail: paul@lehman-valentino.com

**COMPLAINT**

Now comes plaintiff, MARCIA VELA, Individually and d/b/a Personal Representative of the Estate of John Vela, Deceased, by and through her counsel, LEHMAN & VALENTINO, P.C., and for her Complaint against defendants, ACE AMERICAN INSURANCE COMPANY and KNAPE & VOGT MANUFACTURING COMPANY, states as follows:

1. That this Honorable Court has jurisdiction pursuant to 28 US Code, §1331 as the present cause is a civil action arising under the Federal ERISA Act, 28 US Code, §1001 et seq., involving a contract of life insurance and plaintiff is the proper party to bring this action pursuant to 28 US Code, §1132.

2. That plaintiff is and was at all times pertinent hereto a resident of Grand Rapids, County of Kent, State of Michigan and was an employee of defendant, KNAPE & VOGT MANUFACTURING COMPANY.

3. That defendant ACE AMERICAN INSURANCE COMPANY ("ACE") is and was at all times pertinent hereto a foreign insurance company who issued a certain group accident insurance policy to defendant KNAPE & VOGT MANUFACTURING COMPANY for and on behalf of its employees in general and plaintiff in particular, policy number ADDN01173431, said defendant conducting business in the State of Michigan at all times relevant hereto, whose corporate address is 1 Beaver Valley Road, Wilmington, Delaware, 19803.

4. That defendant, KNAPE & VOGT MANUFACTURING COMPANY ("KNAPE"), is and was at all times pertinent hereto a Michigan Corporation duly incorporated under the laws of the State of Michigan whose registered office is 2700 Oak Industrial Drive, Grand Rapids, Michigan, 49505 and whose registered agent for service of process is Peter Martin.

5. That at all times pertinent hereto defendant, KNAPE & VOGT MANUFACTURING COMPANY, employed your plaintiff and provided among other benefits of employment to plaintiff participation in the group accident insurance above stated issued by defendant, ACE AMERICA INSURANCE COMPANY.

6. That the defendant, KNAPE, provided its employees with the subject group accident

insurance policy which provided among other things for benefits on behalf of the employees spouses.

7. That in exchange for premiums paid by defendant, KNAPE, for and on behalf of your plaintiff, defendant, ACE, issued the subject policy of insurance which is in the possession of the defendants.

8. That this cause of action arose as a result of the denial of accidental death insurance benefits to plaintiff's decedent, John Vela, who died on or about February 9, 2008 and which benefits were denied by defendant, ACE, by letter dated February 2, 2009.

**COUNT I- BREACH OF CONTRACT UNDER ERISA**

9. That plaintiff, MARCIA VELA, Individually and d/b/a Personal Representative of the Estate of John Vela, Deceased, incorporates by reference its responses to paragraphs 1 through 8 of plaintiff's complaint as though fully set forth herein, paragraph by paragraph and word for word.

10. That plaintiff, MARCIA VELA, selected coverage under the subject group accident insurance policy for benefits in the event of the accident death of her husband, John Vela, deceased, as a benefit of her employment.

11. That the defendant, KNAPE, obtained said insurance on behalf of plaintiff's decedent's husband and paid the appropriate premium therefore to defendant, ACE, at all times pertinent hereto.

12. That after plaintiff's decedent's accidental death the appropriate application for benefits was submitted to defendants, KNAPE and ACE, which ultimately resulted in a denial of benefits on or about February 2, 2009.

13. That specifically the denial was based on exclusion number 6,

14. That the denial was contrary to the terms of the policy as the exclusion cited does not

form a proper basis for denial of said benefits.

15. That the defendants and each of them acting independently or jointly breached the contract existing between the parties by failing to pay the accidental death benefits plaintiff was entitled to receive in violation of the terms of the contract.

16. That as a direct and proximate result of the breach of contract, plaintiff has been denied the right to receive accidental death benefits for the death of her husband both as personal representative of the estate of John Vela, deceased, and as beneficiary of those benefits and as a consequence plaintiff has suffered damages including but not limited to failure to pay those benefits, interest on those benefits, costs and attorney fees.

17. That the defendants by their conduct and actions have violated the provisions of the group accidental death insurance policy, ADDNO1173431.

18. That the defendants conduct in breach of their duties in applying exclusion number 6 was arbitrary and capricious in its application as well as defendant's refusal to pay the accident death benefit the plaintiff is and remains entitled to.

19. That plaintiff is hereby entitled to bring this suit pursuant to ERISA §502(a) et seq. for violation of the terms of the contract and the ERISA legislation as above stated.

20. That plaintiff is further entitled to an award of attorney fees pursuant to ERISA §502(g)(1) as a result of defendant's refusal to pay those accident death benefits plaintiff is hereby entitled to.

WHEREFORE, your plaintiff prays this Honorable Court enter judgment in her favor and against the defendants, jointly and severally, as follows:

A An award of damages in an amount equal to the accidental disability benefit plaintiff is entitled to under the group accidental insurance policy together with interest thereon at the statutory rate from the date of plaintiff's application, including court costs, interest, penalty interest, statutory attorney fees including fees permitted pursuant to ERISA §502(g)(1) together with such other and further relief as is deemed just and equitable under the facts and circumstances.

Respectfully submitted,

LEHMAN & VALENTINO, P.C.

Paul G. Valentino (P34239)
Attorney for Plaintiff
43494 Woodward Avenue, Suite 203
Bloomfield Hills, Michigan 48302
(248) 334-7787

Dated: February 1, 2010